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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, submitted pursuant to Commission resolution 2000/9

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Executive summary

The development of the human right to adequate housing as a legal and advocacy tool has gained momentum during the past decade, particularly through the consistent work of civil society. The related embedding of this right in the United Nations human rights programme and as a key component of the Habitat Agenda have ensured the recognition of the right to housing as a cornerstone human right. This has resulted in recognition of a housing rights framework and the critical relevance of a gender and housing rights perspective.

Notwithstanding this, it is clear that in reality, the general housing situation is deteriorating for the majority of poor and vulnerable groups. Available statistical estimates suggest that there are at least 100 million people in the world living with no shelter at all. The number of homeless persons is increasing across the world. Between 30 and 70 million children worldwide are living on the streets. Further exacerbating this situation is the trend to ever more rapid urbanization, particularly in Africa and South-East Asia, and growing poverty in countries with a predominantly rural population.

Against this backdrop, the establishment of the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living by the Commission on Human Rights in resolution 2000/9 is both welcome and timely also in view of the forthcoming review of the 1996 Habitat Agenda at the Special Session of the General Assembly in June 2001. Throughout his mandate, it is the intention of the Special Rapporteur to promote greater realization and operationalization of the right to adequate housing through a constructive approach, by closing the gap between legal recognition and practice and seeking solutions to the grave housing and living conditions found globally.

This preliminary report sets out the framework for the Special Rapporteur's work and is divided into four parts. The introduction outlines the mandate and approach. The first section sets out the legal status of the right and reviews the past and ongoing work both within and outside United Nations human rights mechanisms. The second section identifies impediments to the right and issues that merit further analysis, particularly linkages between the right to adequate housing and the processes of globalization. The third section identifies and reviews actions to be undertaken by Member States, international institutions and civil society for greater realization of the right. The report concludes with preliminary recommendations for consideration by the Commission.

Introduction

1. On 17 April 2000, at its fifty-sixth session, the Commission on Human Rights adopted resolution 2000/9 in which it decided to appoint, for a period of three years, a special rapporteur whose mandate will focus on adequate housing as a component of the right to an adequate standard of living, as reflected in article 25, paragraph 1, of the Universal Declaration of Human Rights, article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, and article 27, paragraph 3, of the Convention on the Rights of the Child, and on the right to non-discrimination as reflected in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. The Special Rapporteur was requested: (a) to report on the status, throughout the world, of the realization of the rights that are relevant to the mandate; (b) to promote, as appropriate, cooperation among and assistance to Governments in their efforts to secure these rights; (c) to apply a gender perspective; (d) to develop a regular dialogue and discuss possible areas of collaboration with Governments, relevant United Nations bodies, specialized agencies, international organizations in the field of housing rights, inter alia the United Nations Centre for Human Settlements (UNCHS/Habitat), non-governmental organizations and international financial institutions, and to make recommendations on the realization of the relevant rights; (e) to identify possible types and sources of financing for relevant advisory services and technical cooperation; (f) to facilitate, where appropriate, the inclusion of issues relating to relevant United Nations missions, field presences and national offices; and (g) to submit to the Commission on Human Rights an annual report covering the activities relating to the mandate.

3. The Commission also adopted, at its fifty-sixth session, resolution 2000/13 entitled "Women's equal ownership of, access to and control over land and the equal rights to own property and adequate housing" in which, inter alia, it encouraged all human rights treaty bodies, special procedures and other human rights mechanisms, regularly and systematically to take a gender perspective into account in the implementation of their mandates, including taking into account the resolution.

4. The right to adequate housing, as well as other economic, social and cultural rights, needs to be framed in the context of today's reality, wherein between one fifth and one quarter of the world's population live in absolute poverty. Of the world's 6 billion people, 2.8 billion people live on less than two dollars per day and 1.2 billion live on less than one dollar a day. Women comprise 70 per cent of those living in absolute poverty. Most of the poor are forced to live without access to such basic amenities as food, clothing and shelter.

5. According to UNCHS, it is estimated that in the South, 600 million urban dwellers live in overcrowded and poor quality housing with inadequate provision of water, sanitation, drainage and garbage collection, putting their lives and health continually at risk. So do over 1 billion persons living in rural areas.

6. Homelessness is not a phenomenon exclusive to developing countries and exists, for example, at the rate of 1.5 to 2.5 people per 1,000 in the United States of America and between 4 and 12 per 1,000 in France, Germany and the United Kingdom.

7. Statistics, however, do not fully capture the global state of housing. Indeed, an improved understanding of the state of housing conditions is revealed through the consideration of the following contemporary forms of distressed housing: slums and squatter settlements; old buses; shipping containers; pavements; railway platforms; streets and roadside embankments; cellars; staircases; rooftops; elevator enclosures; cages; cardboard boxes; plastic sheets; aluminium and tin shelters.

8. Faced with the scale of the problem, it is the contention and the point of departure for the Special Rapporteur's mandate that only the human rights paradigm in general, and a housing and land rights approach in particular, can offer the radical and systemic changes that are necessary to offer solutions to this crisis facing humanity. Based on the exhaustive legal basis of the right to housing (see sect. A below) and on the considerable civil society activity, both at a conceptual and a practical level, the Special Rapporteur would like to propose the following working definition for the right to adequate housing:

> "The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity."[1]

9. This definition encompasses a wide-ranging interpretation of the right to housing keeping in mind the critical relevance of this human right to the lives of millions worldwide and in full consonance with the indivisible nature of human rights. It is the intention of the Special Rapporteur, during the course of his mandate, to test this holistic conception of the right to housing and to detail the nature of State and civil society actions required to protect, promote, respect and, where necessary, restore the right to adequate housing.

10. The Special Rapporteur would like to acknowledge the lessons learnt from a close study of the work of the Committee on Economic, Social and Cultural Rights and the Sub-Commission on the Promotion and Protection of Human Rights. He is inspired by the constructive approach adopted by the Committee in its dealings with States and looks forward to a close working relationship with the Committee.

11. Since his appointment the Special Rapporteur has met with the High Commissioner and the Deputy High Commissioner for Human Rights. He acknowledges their advice and encouragement. The Special Rapporteur is also grateful for the support of Habitat International Coalition and its Housing and Land Rights Committee and the International NGO Committee on Human Rights in Trade and Investment (INCHRITI).

I. LEGAL STATUS OF THE RIGHT TO ADEQUATE HOUSING

12. Since the proclamation of the Universal Declaration of Human Rights (UDHR) in 1948, the right to adequate housing has found explicit recognition among a wide range of international instruments. Article 25.1 of the Declaration states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in

circumstances beyond his control." The present review considers the provisions of international human rights instruments, other declarations and guidance, as well as developments within and outside of the United Nations human rights mechanisms that have contributed to clarifying the legal status of the right to adequate housing.

A. Legal sources

13. On the basis of the provisions established in UDHR, the right to adequate housing was further elaborated and reaffirmed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966. Article 11.1 of the Covenant states that: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

14. The right to adequate housing is also recognized in several other international instruments that have focused on the need to protect the rights of particular groups. Article 14.2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women (1979) states that: "States Parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

15. Article 16.1 of the Convention on the Rights of the Child (1989) states that: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation." Article 27.3 states that: "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

16. Article 21 of the Convention relating to the Status of Refugees (1951) provides that: "As regards housing, the Contracting States, insofar as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."

17. Article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) obliges States "to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... (e) ... (iii) the right to housing".

18. Article 17.1 of the International Convention on Civil and Political Rights (1966) states that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."

19. Article 43.1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, currently not yet in force) states that: "Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents."

20. Although not legally binding, various references and provisions regarding housing and land rights and living conditions can be found in numerous international declarations and recommendations. Of particular relevance among them are: the Declaration of the Rights of the Child (1959, principle 4), International Labour Organization (ILO) Recommendation No. 115 concerning Worker's Housing (1961, sect. II, para. 2; sect. III, para. 8.2 (b); sect. VI, para. 19; and Suggestions Concerning Methods of Application, sect. I, para. 5), the Declaration on Social Progress and Development (1969, Part II, art. 10), the Declaration on the Rights of Disabled Persons (1975, art. 9), the Vancouver Declaration on Human Settlements (1976, sect. III.8 and chap. II.A3), the UNESCO Declaration on Race and Racial Prejudice (1978, art. 9.2), ILO Recommendation No. 162 concerning Older Workers (1980, sect. II, para. 5 (g)), the Declaration on the Right to Development (1986, art. 8.1).

21. Issues related to the right to adequate housing were also highlighted in declarations and programmes of action adopted by several of the United Nations global conferences and summits held during the last decade, including Agenda 21 adopted at the United Nations Conference on Environment and Development (1992), the Copenhagen Declaration and the Programme of Action of the World Summit for Social Development (1995), the Beijing Declaration and Platform for Action of the Fourth World Conference on Women (1995) and the Habitat Agenda of the second United Nations Conference on Human Settlements (Habitat II) (1996).

22. Provisions related to the right to adequate housing from these and other declarations and recommendations are available in OHCHR Fact Sheets No. 21 (The Human Rights to Adequate Housing) and No. 25 (Forced Eviction and Human Rights) as well as other links on the OHCHR Web site page on housing (http://www.unhchr.ch/html/menu2/i2ecohou.htm).

B. Interpreting the legal concept of housing rights

23. Following the adoption of ICESCR, significant efforts have been made during the last two decades, both within and outside of the United Nations human rights mechanisms, in further clarifying and expanding the legal concept of the right to adequate housing contained in its article 11.1. An overview of the contributions of the Committee on Economic, Social and Cultural Rights and other treaty bodies, the Sub-Commission on the Promotion and Protection of Human Rights, the Commission on Human Settlements and UNCHS (Habitat), and civil society is presented below.

1. Committee on Economic, Social and Cultural Rights

24. The Committee on Economic, Social and Cultural Rights (CESCR), devoted a day of general discussion to the issue of the right to adequate housing at its fourth session in 1990,[2] and in December 1991 the Committee at its sixth session adopted General Comment No. 4 on the right to adequate housing.[3] The General Comment reflects both the holistic conception of the right and the value it gains from the aspect of adequacy. The Committee advises States parties not to interpret the right to housing narrowly or restrictively as "merely having a roof over one's head or ... as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity" (para. 7).

25. Based on this broad interpretation, the General Comment identified seven aspects of the right to housing that determine "adequacy": (a) legal security of tenure including legal protection against forced evictions; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility for disadvantaged groups; (f) location and (g) cultural adequacy (para. 8).

26. Furthermore, at its sixteenth session in 1997, the Committee adopted General Comment No. 7 on forced eviction,[4] which defined the term as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection" (para. 4). General Comment No. 7 recalls that in accordance with article 2.1 of the Covenant, States are obliged to use "all appropriate means", including legislation, to protect the rights recognized in the Covenant and that "legislation against forced evictions is an essential basis upon which to build a system of effective protection" (para. 10).

27. Cross-references to the right to adequate housing can also be found in other general comments adopted by the Committee.[5] General Comment No. 5 (eleventh session, 1994) on persons with disabilities refers to the effects of disability-based discrimination on housing (paras. 15 and 22). Quoting rule 4 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1996), the General Comment states that, in addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that "support services, including assisting devices [are available] for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights" (para. 33). General Comment No. 6 (thirteenth session, 1995) on the economic, social and cultural rights of older persons[6] recalls that the International Plan on Ageing emphasizes, inter alia, "... that housing for the elderly must be viewed as more than mere shelter and that, in addition to the physical, it has psychological and social significance which should be taken into account" (para. 33).

28. The content and nature of the guidelines and general comments adopted reflect the movement towards a broader and more holistic interpretation of the right to adequate housing. This is most evident in its latest General Comment No. 14, adopted by the Committee on the right to the highest attainable standard of health[7] (twenty-second session, 2000), which emphasizes the interlinkages with other rights: "The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water

and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions ..." (para. 11). Detailing the core obligations arising from State obligations on the right to health, the Committee determined that these include ensuring access to basic shelter, housing and sanitation and an adequate supply of safe and potable water (para. 43).

29. The Special Rapporteur has made a preliminary survey of concluding observations adopted by the Committee since its tenth session 1993, and found that specific references were made to legal and other questions related to the right to adequate housing in concluding observations covering more than 50 countries and territories. He is inspired by the rigour with which the Committee has been addressing this fundamental human right. In particular, the Committee has continued to elaborate on the matter of the indivisibility of all human rights and the interrelatedness of the right to adequate housing with other economic, social and cultural rights, as enunciated in paragraph 7 of General Comment No. 4. The question of the right to adequate housing has often been examined in conjunction with other rights, including health, education, water and food, as well as within the non-discrimination provisions of the Covenant. The Special Rapporteur will review these findings in greater detail in a future report.

30. The Committee has advised State parties to introduce institutional arrangements within the government administration to ensure that their obligations under the Covenant are taken into account at an early stage also in the formulation of national policies on issues such as housing, health and education. The Committee has pointed out that the lack of detailed information with regard to housing and forced evictions has impeded the full consideration of State parties' reports and that the States parties should, if necessary, seek assistance, including international cooperation. The Committee has become increasingly conscious of international economic and development cooperation that has taken place outside the regime of human rights law and has taken note of violations of housing rights, including forced evictions, as a function of government policies resulting from deregulation and privatization as well as structural adjustment programmes.

31. In the view of the Special Rapporteur, the Committee has important functions in further clarifying the right and setting standards. In this respect, he is of the view that the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, in addition to strengthening the recognition of economic, social and cultural rights in general, would enhance the realization of the right to adequate housing. The examination of individual cases of housing rights violations would assist in bringing about clarity and precision to the discussion of housing rights, thereby improving the understanding of the issues at stake. Moreover, the group complaint procedures would allow the Committee to address large-scale housing rights violations of vulnerable and marginalized communities, including indigenous and tribal peoples. The complaint and ensuing investigation procedures also would elucidate conflicting obligations imposed upon States by international human rights treaties and international economic agreements that, inter alia, result in the regression of human rights.

2. Work of other treaty bodies

32. The Special Rapporteur also recognizes the important work that has been carried out by other treaty bodies, namely, the Committee on the Rights of the Child, the Committee on the

Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination. For the purpose of this report, he also undertook a similar exercise in reviewing concluding observations adopted by these bodies since 1992 and other recent developments. While space allows only a brief summary of findings here, more detailed analysis will be presented in the next report.

33. The Committee on the Rights of the Child has, since its second session in 1992, consistently affirmed the interlinkages of the rights of the child with other rights, particularly in extreme situations of poverty, conflict, disasters and social inequalities. In reviewing reports of the States parties, the Committee has been paying particular attention to the protection of children belonging to vulnerable groups, in particular displaced and refugee children, disabled and homeless children, as well as children subject to abuse or violence within the family. In recent years, the Committee has been particularly concerned by the situation of children living and working on the streets and children living on their own and without proper housing, and by the particular vulnerability of girls in these situations.

34. The Committee on the Elimination of Discrimination against Women has focused its attention on the equal right of women to access, own and inherit land, as this is a major factor affecting the situation of rural women. Concerns have been expressed at the negative impacts of globalization and macroeconomic policies on the rural economy, and land distribution through market mechanisms in particular. Even in countries where the law provides equality between men and women with regard to land, the Committee cautions that often prejudices and customary rights are hindering the implementation of the law.

35. The Committee has also been concerned about the equal treatment of women in various government schemes for housing allowances, State loans for housing and access to credit, as well as equal provision of workers' housing for women. The Committee encourages the States parties to give full attention to the needs of rural women and to ensure an active and participatory role in the design, implementation and monitoring of all policies and programmes that are intended to benefit them, particularly women who are heads of household and their families, including in areas such as access to health and social services, income-generating projects and housing.

36. The Special Rapporteur was particularly encouraged by the entry into force on 22 December 2000 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, with ratification by the first group of 10 States parties. The Optional Protocol can be seen as a tangible recognition of the particular challenges women face in seeking redress for their human rights violations. It provides for individual and/or group complaints and inquiry procedures by the Committee. In respect of housing rights, the Optional Protocol will provide an additional monitoring mechanism and an opportunity for inquiry into systematic violations of women's housing rights.

37. The Committee on the Elimination of Racial Discrimination, in its General Recommendation XIX adopted at its forty-seventh session in 1995,[8] observed that in many cities residential patterns are influenced by group differences in income which are sometimes combined with differences of race, colour, descent, national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are

mixed with other grounds. The Committee also highlighted the issue of residential segregation and its far-reaching consequences in economic, social and psychological aspects in its statement to the second United Nations Conference on Human Settlements (Habitat II) in 1996.[9]

38. In a growing climate of racial and ethnic divisions across the world, the Special Rapporteur notes, in addition to the provision on the right to housing in article 5 (e) (iii), of the International Convention on the Elimination of All Forms of Racial Discrimination, the obligation on States contained in article 3 to "particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction". In this context, the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in South Africa in September 2001, offers a unique opportunity to institute concrete measures against racial discrimination in housing and land rights. The Special Rapporteur is of the view that the World Conference should urge States to strengthen their monitoring of the situation of marginalized racial and ethnic groups, through periodic sampling and compilation of statistical information disaggregated by race or ethnic group, particularly with regard to fundamental economic and social indicators including housing. Furthermore, the World Conference should urge States to enact or strengthen legislative measures prohibiting racial discrimination in all areas of the public and private sectors, including housing and land policies, as well as in the provision of related services.

39. The Special Rapporteur is also aware of work done by the Human Rights Committee that has relevance for understanding the indivisibility of the right to housing and civil and political rights.[10] In the next report the Special Rapporteur will study in more detail the work of the Human Rights Committee.

3. Sub-Commission on the Promotion and Protection of Human Rights

40. In parallel to the work of the treaty bodies, the issue of the right to housing has received particular attention in the Sub-Commission on the Promotion and Protection of Human Rights, formerly the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Special Rapporteur would like to pay tribute to the important work undertaken by his predecessor, Justice Rajindar Sachar. In 1991, Mr. Sachar was entrusted by Sub-Commission resolution 1991/26 with producing a working paper on the right to adequate housing, with a view to determining how best to further both the recognition and the enforcement of the right. His working paper (E/CN.4/Sub.2/1992/15) focused primarily on legal issues pertaining to the right and on the primary causes of the global housing crisis. In 1993, the Sub-Commission appointed Mr. Sachar as Special Rapporteur on promoting the realization of the right to adequate housing. His first progress report (E/CN.4/Sub.2/1993/15) provided a detailed legal analysis of the legal obligations of States to respect, protect and fulfil housing rights. It also contributed to clarifying the misconceptions about housing rights, and to furthering the understanding of how housing rights can be realized and what actions Governments are obligated to undertake towards this end.

41. His second progress report (E/CN.4/Sub.2/1994/20) addressed issues that continue to hinder the full realization of the right to housing, including the misconception of the lack of State

resources as an impediment to achieving housing rights. Also included in the report was a draft international convention on housing rights that attempted to set out in one document the inherent obligations and entitlements arising from the right to adequate housing.

42. His final report (E/CN.4/Sub.2/1995/12) contained a framework for identifying principles and indicators of the right to housing, and concluded with detailed recommendations, in respect of the full realization of the right, for Member States, the United Nations and other international bodies. Furthermore, it also gave full recognition to the catalytic role played in advancing this human right by civil society groups.

43. Mr. Sachar placed particular emphasis in his final report on the need for human rights groups to adopt a holistic approach to human rights. Moreover, he contributed to identifying a series of elements of the right to housing that "must be viewed as inherently justiciable", including, inter alia, protection against arbitrary, unreasonable, punitive or unlawful forced evictions and/or demolitions; non-discrimination and equality of access to housing; housing affordability and accessibility; and equitable access to credit, subsidies and financing on reasonable terms for disadvantaged groups. Mr. Sachar also observed that, despite major progress regarding the definition of housing rights, implementation and judicial enforcement remained inadequate, a focus of the present Special Rapporteur's efforts.

44. Justice Sachar also identified the need for more work on understanding the precise nature of the link between the right to housing and the right to a safe environment; the right to health; the right to land and food; and the rights of women and of children. The Special Rapporteur concurs with Justice Sachar that these are congruent rights and intends to study the interlinkages in more detail.

45. Coinciding with and following Mr. Sachar's mandate, the Sub-Commission has adopted a series of resolutions affirming this right as well as its relevance for the housing rights of children (resolution 1994/8), of women (resolutions 1997/19 and 1998/15) and of refugees and internally displaced persons (1998/26).

4. Commission on Human Settlements and UNCHS (Habitat)

46. The Special Rapporteur acknowledges the contributions made by UNCHS (Habitat) and the Commission on Human Settlements in further developing the content of the right to housing and strategies for its operationalization. The right to adequate housing also received wide international attention, notably in the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in resolution 43/181 in 1998. Both UNCHS and the Global Strategy stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost."[11]

47. In 1993, the Commission on Human Settlements adopted resolution 14/6 on the human right to adequate housing,[12] which set in motion various processes for operationalizing the protection and promotion of the right to adequate housing. Subsequently, UNCHS prepared a background paper proposing initial steps for the housing rights strategy.[13] Based on this, an expert group meeting on the human right to adequate housing was held at Geneva in

January 1996, jointly organized by UNCHS and the United Nations Centre for Human Rights. The meeting reviewed existing legal instruments and monitoring mechanisms, and recognized the need for developing an international legal instrument for the promotion and protection of housing rights.[14]

48. Of utmost significance was the convening of the second United Nations Conference on Human Settlements (Habitat II) at Istanbul in June 1996. The Habitat Agenda and Plan of Action reconfirmed the legal status of the human right to adequate housing, as well as suggesting in this context ways to prevent homelessness; prevent discrimination in housing; promote security of tenure; prevent illegal evictions and promote access to information, land, services and finance for affordable housing. The Conference also recognized the vital role of non-governmental organizations (NGOs) and community-based organizations (CBOs) in the process of realizing the right to adequate housing.

49. In 1997, in resolution 16/7 on the realization of the human right to adequate housing,[15] the Commission recommended that a joint programme be elaborated between UNCHS and the United Nations Centre for Human Rights. Accordingly, the two organizations co-organized an expert group meeting at Geneva on practical aspects in the realization of the right to adequate housing, which produced draft guidelines for actions by relevant parties at the local, national and international levels, including a proposal for a joint United Nations housing rights programme led by UNCHS and OHCHR. In July 2000 UNCHS launched the Global Campaign for Secure Tenure.

50. While all these steps are important, it is the view of the Special Rapporteur that progress on developing and operationalizing a United Nations systemwide thrust on the right to adequate housing, including the United Nations housing rights programme, has been slow. Particular responsibility for operationalizing housing rights rests with OHCHR and UNCHS. In addition, there is a need to institutionalize housing rights in all relevant divisions of OHCHR and UNCHS including taking on staff that is well versed in this field. The Special Rapporteur sees the evolution of a United Nations housing rights programme as critical to his mandate and will assist in this endeavour.

51. The Special Rapporteur also notes that in recent years, UNCHS has sought to adopt a new strategic vision, in which it rechristened itself as "the City Agency". While global demographic trends towards urbanization may have warranted this focus, the reality remains in the world today that in the countries of the Middle East, several countries of sub-Saharan Africa and Asia remain fundamentally rural with 70 to 80 per cent of the population living in rural areas. The Special Rapporteur is concerned that at the present time there is no United Nations agency dealing with the dire housing and living conditions in parts of the world that are predominantly rural. He hopes during his mandate to draw attention to the state of housing in rural areas and the policy recommendations that emerge.

52. In addition to addressing the above-outlined shortcomings of UNCHS, the forthcoming Special Session of the General Assembly for an Overall Review and Appraisal of the Implementation of the Habitat Agenda ("Istanbul + 5") must build upon the reaffirmation of the right to adequate housing in the Habitat Agenda. This could be done by initiating a process for the adoption of instruments, such as standard rules or guidelines, on various aspects integral to

the realization of the right to housing. This is essential to ensure that States continue to have consultations leading towards the implementation of the right to housing. The Special Rapporteur will engage with the preparatory process for the special session to ensure consideration of these issues.

5. Contribution of civil society

53. The Special Rapporteur recognizes the important role played by civil society in pursuit of greater clarity in the definition of the right to housing and its practical implementation. Efforts by non-governmental and community-based groups include, broadly, the development of methods and tools for monitoring the enjoyment of, and impediments to the right to housing, as well as greater specialization in the field of various economic, social and cultural rights. The increased professionalization of the work of housing rights monitors and human rights organizations in general is essential to meeting the challenges faced in recognizing economic, social and cultural rights in their organic relationship with other human rights. Civil society is responding to the Covenant's call for "progressive realization" with practical notions of what steps Governments can take, including to enable people's initiatives. Therefore, NGO cooperation with the treaty-monitoring bodies as problem-solving laboratories, as exemplified in the work of CESCR, continues to give definition and practical meaning to the right to housing.

54. The Special Rapporteur is aware of civil society activities on the ground, such as training and developing methodologies for monitoring and implementation of the right. In one illustrative example, a technical team of the Habitat International Coalition's Housing and Land Rights Committee (HIC/HLRC) has pooled its experience in housing and land rights in various regions to develop a Housing Rights Barometer. This effort is resulting in the production of a "tool kit" of exercises and methods that relate to the logical and progressive steps toward realizing the right to housing. Application of the Barometer has served a variety of goals, including: (a) monitoring, documentation and recording; (b) quantifying/evaluating impacts; (c) identifying and solving problems; (d) public information and campaigns; (e) social mobilization; (f) media work; (g) legal defence; (h) compensation claims; and (i) cooperation with United Nations treaty bodies.

55. The Special Rapporteur would like to bring to the Commission's attention a number of other valuable resources on economic, social and cultural rights that have resulted from civil society efforts at substantiating housing rights and detailing issues of implementation.[16]

II. PRIORITY ISSUES AND IMPEDIMENTS TO REALIZING THE RIGHT TO ADEQUATE HOUSING

A. Globalization and the right to adequate housing

56. The Sub-Commission resolutions on trade, investment and finance (1998/12, 1999/30 and 2000/7), the study of the Special Rapporteurs on globalization and its impact on the full enjoyment of all human rights (E/CN.4/Sub.2/1999/11 and E/CN.4/Sub.2/2000/13) and the work of CESCR, including its statements on globalization in 1988 and to the third Ministerial Conference of the World Trade Organization in 1999 (E/C.12/1999/9), as well as its days of

general discussion and informal workshops with civil society alliances such as INCHRITI, are evidence of the increasing interest in and invaluable contribution to the understanding of globalization issues.

57. It is well established that the benefits of globalization vary with the level of development of countries and also, to a large degree, the ability of people to take advantage of the opportunities offered by it. For the homeless and the poor, the benefits of globalization have been hardly significant. The findings from the UNCHS Urban Indicator Database reveal that there is a wide gap between income groups, within countries and across countries, in terms of the availability, affordability and habitability of housing and access to utilities, which has resulted in an increase in the number of people in inadequate and insecure housing and living conditions.

58. Nearly all countries at all levels of development have undertaken macroeconomic reform programmes during the past two decades, strongly influenced by market forces and policies of international financial institutions (IFIs). These reforms and domestic policy decisions regarding liberalization, deregulation and privatization have, to varying extents, constrained the exercise of monetary and fiscal policy options for social purposes, including provision of adequate housing. In addition, the United Nations Conference on Trade and Development (UNCTAD) reports that, despite these economic reforms, the expectant economic growth has been too slow, particularly in the least developed countries (LDCs), to make a significant improvement in living or social conditions.[17] The drawbacks of the growing reliance on narrow macroeconomic considerations that drive the availability of resources to social sectors have been a growing concern in a number of United Nations treaty bodies.

59. Where developing countries have successfully attracted a large increase of private capital flows, the rapid growth of cities typically outpaces the provision of adequate housing, resulting in an increased number of the poor living in squatter settlements with no security or civic services. This situation is further aggravated when urban authorities or private operators clear such settlements for commercial use or high-income housing. Moreover, increasing trends towards privatization of housing services and markets also typically result in land speculation, the commodification of housing, the application of user fees for housing resources such as water, sanitation and electricity, and the repeal or amendment of land ceiling and rent control legislation. The result is the increased marginalization of the poor.

60. The intention of the Special Rapporteur is to establish linkages between the processes of globalization and the realization of the right to adequate housing through, inter alia, collection of empirical data and analysis and assessment of the impact of macroeconomic adjustment and debt service on national housing and land policies. There is also a need to ascertain whether the current global social policy prescriptions, under the rubric of "good governance" (World Bank, United Nations Development Programme, UNCHS) and "poverty reduction" (World Bank, International Monetary Fund) are compatible with housing rights principles and State obligations.

61. There is an urgent need to define a research agenda to determine the impact of economic globalization on housing and land rights. The Special Rapporteur will seek the advice of and hopes to collaborate with relevant mechanisms of the United Nations including interested treaty bodies and the Special Rapporteurs on globalization and its impact on human rights, structural

adjustment and debt and the right to food, possibly through convening an expert seminar. The Special Rapporteur would appreciate assistance from Governments and civil society in providing him with information and support in conducting such exercise, including facilitating his country visits.

B. Drinking water as a human right

62. Access to safe drinking water and sanitation is intrinsically linked to full realization of the right to adequate housing. Globally, 1.7 billion persons lack access to clean water and 3.3 billion are without proper sanitation facilities.[18] The Special Rapporteur is aware of the inspiring work of the Sub-Commission on this subject, exemplified in the working paper by Mr. El Hadji Guissé on the right to access of everyone to drinking water supply and sanitation services (E/CN.4/Sub.2/1998/7). In this paper, Mr. Guissé mentions specifically paragraph 8 of CESCR General Comment No. 4, which states that "all beneficiaries of the right to adequate housing should have sustainable access to ... safe drinking water". He also highlights impediments to access, including macroeconomic issues such as the effects of external debt, structural adjustment programmes, the privatization of State enterprises and inadequate planning that results in the unequal distribution, both socio-economic and geographical, of water. To this list the Special Rapporteur would like to add the impediments to the realization of the right to housing that come from the application of "user fees" to water, especially when this is done without regard to the capacity of the poor to spend the meagre funds they have for this life-giving resource. In light of the need to enhance the human rights-based work on access to potable water and sanitation, and consistent with Sub-Commission resolution 2000/8 which stress the "international cooperation" aspects of the work, the Special Rapporteur will ensure that this issue remains a central component of his mandate and intends fully to support and complement, from a housing and land rights perspective, the mandate and important work of Mr. Guissé.

C. Poverty and its impact on housing rights

63. The Special Rapporteur intends, through analysis and case studies, to elaborate further on the nexus between poverty and housing rights, and highlight several issues for the attention of the Commission and the United Nations system. Recognizing that any policy recommendations made during his mandate must consider as participants the people and communities living in insecure and inadequate housing and living conditions, and incorporate their views, the Special Rapporteur intends to examine, inter alia:

The impact of growing income disparity among and within countries;

The impact of economic globalization;

Non-compliance with the international human rights instruments; and

The overemphasis at the national level with wealth per se and a lack of strategies for distributive justice, including land reform and increases in social spending.

64. Faced with this reality, it is urgent to challenge the misconception that the poor, especially those living in slums and other marginal areas, are responsible for social violence and environmental degradation. Indeed, they are the primary victims of such phenomena. A new form of discrimination, not yet addressed in existing human rights instruments, has emerged and people are increasingly marginalized and discriminated against not merely on the grounds of race, class or gender, but because they are poor. The Special Rapporteur will attempt to ensure that this form of discrimination is taken into account in preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

65. The Special Rapporteur would also like to draw attention to the housing situation of LDCs in view of the increasing poverty, inadequate civic services and other environmental and social factors that have affected LDCs during the last decade. The Third United Nations Conference on the Least Developed Countries (LDC-III), to be held in Brussels in May 2001, provides an opportunity for both LDCs and developed countries to reaffirm their obligations under ICESCR and renew their commitments in the new Programme of Action to be adopted. The Special Rapporteur notes with regret that, despite the recognition of housing issues in the 1990 Programme of Action, the current draft Programme of Action for LDC-III (A/CONF.191/IPC/L.4) does not contain any reference to housing as a component of an adequate standard of living, which is essential in building the human capacities of LDCs. The Special Rapporteur urges the Conference to recognize and to institute mechanisms for integrating economic, social and cultural rights in the implementation and follow-up of the Conference outcomes.

D. Gender discrimination in housing and land rights

66. The Special Rapporteur recognizes that there is a gender dimension to every human rights violation and that this is especially true in respect of housing rights violations. Access to and control over land, property and housing are determinative of women's overall living conditions and are necessary to the development of sustainable human settlements in the world today. These entitlements are essential for women's economic and physical security and to the struggle for equality in gender relations.

67. Pursuant to the Commission resolution 2000/13, and in order that women's critical role is recognized and their rights advanced, the Special Rapporteur will encourage the international community to ensure that the strategies and objectives envisioned in numerous legal instruments are realized and that women are accorded substantive rather than illusory rights as they pertain to housing. He will encourage and support the necessary structural transformation in respect of women's empowerment and, to this end, will endeavour to promote awareness of, and accountability to the commitments and responsibilities of Governments and the international community.

68. Of grave concern to the Special Rapporteur is the situation of women whose lives are governed by both constitutional and personal status laws. Of special import to women in countries with such laws is that the equal right to inherit land and property is either precluded by customary law or mediated by a male relative. The Special Rapporteur stresses the right of women to be "free from all forms of discriminatory conduct", as enunciated in resolution 2000/13, and, in accordance with this conviction and the resolution, intends to

investigate this issue throughout his mandate. The Special Rapporteur intends to collaborate on this issue with the relevant units and programmes of UNCHS, relevant treaty bodies and related mandates, especially the Special Rapporteur on violence against women.

E. Children and housing rights

69. Article 6.2 of the Convention on the Rights of the Child states that "States Parties shall ensure to the maximum extent possible the survival and development of the child," to which children's housing rights and living conditions are integrally linked. These human rights are essential to their cognitive, physical, cultural, emotional and social development, particularly as children are disproportionately vulnerable to the negative effects of inadequate and insecure living conditions.

70. The Sub-Commission, in its resolution 1994/8 on children and the right to adequate housing, stressed the adverse impact of poverty, and in particular of inadequate housing and living conditions, on the basic rights of children. This draws the link between poverty and the absence of conditions conducive to development, namely, clean water, sanitation facilities, food, health and education. Throughout his mandate, the Special Rapporteur intends to devote special attention to the impact that violations of the right to adequate housing have on the basic rights of children, especially the girl child and others having special needs and/or subject to discrimination.[19]

71. Moreover, the Special Rapporteur encourages States and United Nations bodies, the World Bank and the International Monetary Fund, to take a proactive approach to realizing children's rights to housing and, in accordance with resolution 1994/8, to develop sustainable poverty reduction solutions with a view to ensuring that the housing and living conditions are improved for the world's half a billion children living in abject poverty. The Special Rapporteur recognizes as well that solutions must necessarily include the participation of children.

72. The Special Rapporteur will attempt to ensure that these issues are given due consideration at the forthcoming Special Session of the General Assembly on Children, September 2001, which will include a review of the progress made since the World Summit for Children in 1990.

F. Forced evictions

73. The issue of forced evictions has been mentioned briefly in various sections of this report. In his next report, the Special Rapporteur will devote attention to the phenomenon of forced evictions which are, as recognized in Commission resolution 1993/77, gross violations of human rights. Specifically, he will conduct an in-depth review of the legal definition of forced eviction as enunciated in international human rights and humanitarian legal instruments and various resolutions of the Commission and Sub-Commission. He will explore documents that have expanded the legal definition, including CESCR General Comments Nos. 4 and 7; the expert seminars on housing rights (1996) and forced evictions (1997); concluding observations under treaty bodies; United Nations guidelines on development-based displacement and on internal displacement; the human rights dimensions of population transfer; and principles on restitution, compensation and rehabilitation of victims. Moreover, it is the intention of the

Special Rapporteur to look at forced evictions that are the result of, inter alia, ethnic cleansing, civil conflict, development projects and the denial of the right to self-determination. He will devote particular attention to the disparate effects of forced eviction on women and children.

G. Indigenous and tribal peoples' housing and land rights

74. The Special Rapporteur takes note that the pursuance of the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity becomes most strikingly clear in the case of indigenous and tribal peoples' right to adequate housing, especially in respect of land claims and rights. This question has been one of the most contentious issues for States in their relationship with indigenous peoples, and has been central to the consideration of the United Nations of the human rights of indigenous and tribal populations since 1987 when it was noted in the conclusions and recommendations of José R Martínez-Cobo.[20] The special relationship of indigenous people to their lands is not only made clear by their conduct and articulation of their way of life, but by the fatal consequences of their historical dispossession of them.

75. The Sub-Commission's Special Rapporteur on the subject, Ms. Erica-Irene A. Daes, has pointed out that, for indigenous peoples, survival rights involve at least four key elements related to their place to live: (a) that a profound relationship exists with their lands, territories and resources; (b) that this relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities; (c) that there is a collective dimension to this relationship; and (d) that the intergenerational aspect of such a relationship is crucial to indigenous peoples' identity, survival and cultural viability (see E/CN.4/Sub.2/2000/25). Each of these elements has corresponding dimensions strengthened by the holistic conception and widespread legal recognition of the right to adequate housing.

76. The Special Rapporteur intends to examine these links and the housing dimensions that emerge from the explicit standards found in international instruments such as ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the draft United Nations declaration on the rights of indigenous peoples. He will seek to address the United Nations Working Group on Indigenous Populations and develop a working relationship with the Permanent Forum on Indigenous Issues with a view to understanding the many obstacles that remain for the enjoyment of legally recognized indigenous housing and land rights.

H. Domestic applicability and justiciability

77. More than 30 countries currently include housing rights in their constitutional framework, in addition to specific legislation. For the 145 States that have ratified the ICESCR, ensuring the domestic status and application of the constituent rights remains an important priority. Consequently, justiciability of the right to adequate housing in courts at all levels is needed in order for States effectively to respect, protect, promote and fulfil the right to housing. Facing that enduring challenge, it is important to take note of some significant developments, both encouraging and regressive.

78. One of the most significant of these developments has been the recognition accorded to the right to housing in the Constitution of South Africa:

> "Section 26 (1) Everyone has the right to have access to adequate housing. (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

79. This far-reaching provision has already had legislative impact. On 4 October 2000 the Constitutional Court of South Africa delivered a decision in respect of the housing rights of persons forced to live in deplorable conditions while waiting for their turn to be allocated low-cost housing.[21] The judgement significantly advanced the right to adequate housing domestically as well as internationally by resting on section 39 of the Constitution of South Africa,[22] article 11.1 of the ICESCR[23] and the minimum core obligations for States parties to the Covenant set out in General Comment No. 3.[24]

80. The Court held that relevant international law must provide guidance to domestic courts, but more importantly, that as a signatory to the Covenant, South Africa was bound to uphold the principles therein. The Court also held that the State was obligated to abide by its commitments in proactive and practical ways, despite financial constraints, and that the programmes and policies necessary to meet these commitments are matters appropriate for judicial review.

81. In stark contrast, two recent judgements from India can be considered significant setbacks. In the same month as the case in South Africa, the Supreme Court of India in Narmada Bachao Andolan v. Union of India and Others[25] revealed a regressive attitude towards housing rights and disregard for both fundamental human rights and India's obligations under the ICESCR.[26] At issue was the continued construction of the Narmada Dam and its significant impact on both the environment and the hundreds of thousands of tribal people in the Narmada Valley, who have been displaced with inadequate resettlement and rehabilitation plans.[27]

82. The Special Rapporteur is concerned that, despite detailed knowledge of the inability of the authorities to determine the total number of people to be displaced and to find adequate land for their resettlement, and the incomplete resettlement for those already displaced, the Supreme Court ruled that "... displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights..."[28] and held that the construction of the dam would continue. The judgement contradicts previous Supreme Court rulings that have upheld the right to shelter as related to the right to life[29] as well as the Narmada Water Disputes Tribunal decisions. It is also dismissive of the legitimate struggle of the people of the Narmada Valley led by the Narmada Bachao Andolan (Save the Narmada Campaign), petitioner in the case.

83. In another case, the Bombay High Court heard a petition filed in 1995 by the Bombay Environmental Action Group (BEAG) to "remove forthwith" informal settlement dwellers (as "encroachers") adjacent to the Sanjay Gandhi National Park so as to ensure the protection of "the

environment and all its aspects". Subsequent to the petition, the Bombay High Court of 7 May 1997 directed the relevant authorities to evict persons from their homes, pursuant to various wildlife protection and conservation laws, effectively depriving them of their livelihood.

84. The Indian Peoples Human Rights Tribunal on Sanjay Gandhi National Park, determined that the BEAG petition was clear evidence that its vision of a "clean environment" excludes vast sections of the population who were unpropertied and living in abject poverty. As well, the Court's summary eviction order will eventually affect half a million slum-dwellers. Particularly disturbing was the fact that the Court not only ordered this mass eviction, but it explicitly ordered the demolition of homes and the destruction of all belongings and construction materials which, in the first wave of evictions, were gathered and burnt by the demolition squad.

85. The recognition of the indivisibility and interdependence of human rights is essential to their full realization. It is therefore a matter of concern that judgements across the world are unfortunately providing a legal basis for a growing conflict between proponents of the right to a healthy environment and the right to housing and livelihood. These judgements not only create disharmony among complementary human rights, but in doing so violate the human rights of the very people the courts are charged with protecting.

86. In both cases cited above, the Special Rapporteur has received communications from affected parties. He will continue to monitor these and other such cases and take action to expose the inconsistencies of such judicial decisions with the international provisions concerning housing rights and forced evictions. Under the theme of "Justiciability of the right to housing" he will dedicate a section of his next report to both the progressive and regressive developments in respect of the human right to housing in domestic courts, and would appreciate receiving information on developments such as those highlighted above.

III. ACTIONS TO PROMOTE THE REALIZATION OF THE RIGHTS TO ADEQUATE HOUSING

A. Approach/methodology proposed by the Special Rapporteur

87. The Special Rapporteur intends to take a constructive approach that will provide solutions aimed at the realization of the human right to adequate housing. While the violations approach yields critical insights into the many dimensions of housing rights (such as through a study of the causes and consequences of forced evictions), it is the Special Rapporteur's intention to focus primarily on identifying where and in what form innovation and strategic cooperation have led to the realization of the rights. The Special Rapporteur intends to draw from them policy suggestions with demonstrated practicality. At the same time the Special Rapporteur will make a critical analysis of the current global fashion of "best practices" from a housing rights perspective.

88. He will attempt to investigate key dimensions of the right to housing keeping in mind the indivisibility of all human rights, especially the interface between housing as an economic, social and cultural right and critical civil and political rights such as the right to information and the right to the security of the home, without which the right to adequate housing loses its meaning.

89. In order to fulfil this ambitious mandate, the Special Rapporteur will seek the cooperation and partnership of a variety of individuals, organizations and State institutions. In addition, he expects to engage in active dialogue with United Nations and other intergovernmental agencies, IFIs, human rights treaty bodies and civil society organizations at all possible levels.

B. Cooperation with Governments

90. In the extensive work undertaken in the last decade on the right to housing, numerous insights have emerged on the precise nature of State responsibilities at the international and national levels. The forthcoming reports of the Special Rapporteur will detail the nature of these obligations, which will focus on, inter alia:

(a) Engaging in a dialogue towards developing further the "core content" of the right to adequate housing, and the State obligations to "recognize, respect, protect and fulfil" the right;

(b) Defining and studying the feasibility of indicators and benchmarks to understand better the meaning of "adequacy" in the context of the right to housing as a component of the right to an adequate standard of living;

(c) Applying the Limburg Principles and the Maastricht Guidelines;

(d) Exploring prospects for domestic justiciability of the right to adequate housing;

(e) Analysing globalization pressures, structural adjustments and debt servicing and their effect on States' ability to implement the right to adequate housing; and

(f) Developing further the meaning of "international cooperation" in the context of covenanted human rights obligations relating to the right to housing.

C. International cooperation

91. Of particular importance are the obligations for States emerging out of the international legal provisions of international cooperation. These obligations are especially critical given the current global reality of growing income disparities, the related growing civil society unrest, and academic and media attention which have highlighted the policies and guiding principles of bilateral and multilateral institutions that drive economic globalization. The groups, mentioned above, that question the ideological and procedural basis of economic globalization recognize the importance of the "regulatory" role of the State. The link with State obligations under the international human rights instruments is obvious.

92. With reference to economic, social and cultural rights, particular attention needs to be given to articles 2.1, 11, 15, 22 and 23 of ICESCR, which build upon the foundation for international cooperation in Articles 55 and 56 of the Charter of the United Nations, and the obligation for States parties to recognize the essential role of international cooperation and to reaffirm their commitment to take joint and separate action.

93. What flows from this is that States' international policies (or policies they contribute to formulating at multilateral forums and institutions) must respect the full realization of people's economic, social and cultural rights. These insights and provisions obviously have implications for trade, investment, finance, debt and structural adjustment policies.

94. In the context of the right to adequate housing, it is important to keep in mind the obligations enshrined in article 11.1 of ICESCR urging all States parties to "take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent". CESCR further clarified this obligation in General Comment No. 4 for both States and IFIs who must:

> "seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected people" (para. 19).

95. The Special Rapporteur would like to stress that in this era of increasing interdependence, when it is clear that States acting alone cannot meet their human rights obligations, that it is important to go beyond the discussions of official development assistance or other forms of financial assistance. The "solidarity" and "fraternity" dimensions of international cooperation need urgent attention. In order to ensure that the obligations flowing from the "international cooperation" provisions of international human rights instruments are met, the Special Rapporteur will examine two areas of work:

(a) The need to review existing and potential international economic and other obligations; and

(b) The need to assist, through "joint and separate action", in the improvement of housing and living conditions.

96. The Special Rapporteur finds the field of "international cooperation" a valuable area of inquiry and action and an under-utilized aspect of international human rights law and relations. He is encouraged by the attention that this issue is gaining in various human rights forums,[30] and, pursuant to resolution 2000/9, would like to contribute to the development of instruments that would be useful to Governments, relevant United Nations bodies, specialized agencies, international organizations in the field of housing rights, non-governmental organizations and international financial institutions to counter the adverse effects of economic globalization. The Special Rapporteur would also like to underscore the human rights aspects of international cooperation in the context of the High-level Event on Financing for Development to be held in 2002.

D. Cooperation with international and regional financial and economic institutions

97. An increased focus on poverty and country-owned processes in the policies of the international financial institutions such as the World Bank and IMF is reflected in new instruments such as the Poverty Reduction and Growth Facility (PRGF) of IMF (which replaced the controversial Enhanced Structural Adjustment Facility (ESAF) in November 1999) and the

Poverty Reduction Strategy Paper (PRSP) and Comprehensive Development Framework (CDF) processes of the World Bank. The Special Rapporteur is of the view, however, that given the reluctance of these institutions to jettison the narrow macroeconomic perspective that continues to drive these new initiatives, it is unlikely that these policies will contribute to the realization of economic, social and cultural rights in general and the right to adequate housing in particular. The Special Rapporteur will pay particular attention to the changes in policy conditionality as a result of the transformation of ESAF into PRGF and the national responses, and will also review the current debt-relief mechanisms, particularly the Heavily Indebted Poor Country (HIPC) initiative, and their likely effect on the poverty reduction prospects of HIPCs, especially the right to adequate housing. The Special Rapporteur looks forward to working closely with other mandates established by the Commission and the Sub-Commission.

E. Cooperation with the United Nations bodies and human rights mechanisms

1. Developing linkages with treaty bodies and other mandates

98. The Special Rapporteur will make every effort to encourage strengthening linkages between his mandate and the treaty bodies, as well as with other mandates established by the Commission and Sub-Commission, including those on food, water, internally displaced persons, migrants, indigenous people, street children, human rights defenders, women and violence, extreme poverty, and the effects of structural adjustment policies and foreign debt. The Special Rapporteur has, during the relatively short period since his appointment, had opportunities for informal exchanges of views with several other special rapporteurs and independent experts, and is convinced that regular consultations among all mandate holders will enrich the normative content of all rights and enhance the impact of thematic mandates. The Special Rapporteur is also grateful to have been given an opportunity to hold a dialogue with CESCR at its twenty-fourth session on 29 November 2000, and appreciated the useful advice and guidance from the Committee members.

2. Inter-agency consultation

99. The Special Rapporteur is expected to play a catalytic role in promoting interagency cooperation among United Nations bodies and other international organizations. Towards this end, an inter-agency consultation meeting was organized by OHCHR in cooperation with UNCHS in Geneva on 28 November 2000, for the initial stocktaking of activities undertaken by various agencies relevant to his mandate. The initial assessment revealed that the various aspects of the right to adequate housing were seriously dealt with by several agencies, including UNHCR and UNICEF, and that others were in the process of re-evaluating the housing dimensions of their mandates, keeping in mind the relevance of the human rights approach.

100. This meeting was also invaluable to the Special Rapporteur in mapping out possible modalities of interaction with United Nations bodies in carrying out his mandate, and as such he requests OHCHR to organize such an inter-agency consultation on a regular basis.

3. Integrating the right to adequate housing in the operational activities of the United Nations

101. The Special Rapporteur recognizes the important role the United Nations system has, through the effective use of the United Nations Development Assistance Framework (UNDAF) and Common Country Assessment (CCA) processes, in responding to the needs of its member States and in promoting greater realization of all human rights at the field level. In this context, he is aware that OHCHR has been actively promoting rights-based approaches through the CCA/UNDAF. While the current CCA indicator covers housing statistics in terms of sufficient living space, disaggregation of indicators beyond gender and geography, such as discrimination and exclusion with regard to race, religion and ethnicity, are necessary to achieve more meaningful analysis of the enjoyment of the right to adequate housing. Towards this end, the Special Rapporteur looks forward to working with OHCHR, UNCHS and the United Nations Development Group in further refining CCA/UNDAF as a tool to promote, in the context of the right to adequate housing: (a) free, active and meaningful participation; (b) the empowerment of women; (c) accountability by all partners; and (d) non-discrimination and attention to the rights of vulnerable people and communities.

102. In this context, the Special Rapporteur notes with interest the recent launching of the Global Campaign for Secure Tenure by UNCHS and attaches importance to strengthening cooperation between the two offices and with other partners, including civil society, for operationalizing the campaign for the further realization of the right. The Special Rapporteur will seek to ensure that this campaign evolves conceptually from the current narrow focus to embrace the wider requirements of the right to adequate housing. This reassessment needs to include also a wider participation of civil society organizations that are directly working from a housing rights-based perspective across the world.

103. The Special Rapporteur welcomed the opportunity to attend a joint meeting on technical cooperation held on 28 November 2000 between OHCHR and UNCHS, at which it was revealed that the vast majority of field activities and projects of both agencies were not conceptualized and made operational from a housing as a human rights perspective. As such, the Special Rapporteur will review the technical cooperation activities of all relevant agencies, particularly OHCHR and UNCHS.

4. Cooperation with regional human rights bodies and national human rights institutions

104. The Special Rapporteur intends to forge a working relationship with regional human rights mechanisms and national human rights institutions, with a view to understanding the extent of the work on the right to housing by these bodies and, where necessary, encouraging more work on this right. The need, for example, for national human rights institutions to focus more on economic, social and cultural rights is evident. An attempt will also be made to bring to the attention of these bodies violations of the right to housing that come to the notice of the Special Rapporteur.

F. Cooperation with civil society

105. The Special Rapporteur acknowledges, and is inspired by, the genius and innovation that characterizes civil society in respect of housing rights and hopes to act as a conduit for this wisdom by bringing the voices of the poor to the ear of the international community, in particular through popular expressions such as poetry, case studies and stories.

106. Over the past decade, expertise has developed within civil society on a range of areas relevant to the mandate of the Special Rapporteur. These include conceptual work and standard-setting, human rights education and learning materials, strategies for alternative planning from slum settlements, community finance, formation of campaigns, documentation of violations and so forth.

107. The Special Rapporteur will develop methodologies for collaboration with the various levels of ongoing efforts. Some of these may include:

(a) Development of questionnaires on monitoring the realization of housing rights and assessing violations;

(b) Developing an urgent action response mechanism;

(c) Encouraging increased use of the United Nations system including alternative reporting procedures; and

(d) Encouraging the development of human rights education materials, including training manuals and so forth.

IV. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

108. Given the information that is already available to the Special Rapporteur, it is clear that housing and living conditions across the world are deteriorating. Therefore, the creation of the Special Rapporteur's mandate is a welcome step that could lead to a better understanding of the structural reasons for this state of affairs and act as a catalyst for institutionalizing housing rights. The Special Rapporteur is of the view that a forthright approach in the mandate that draws upon the considerable wisdom that rests with Governments, the United Nations and other international agencies, civil society and the professional community can result in concrete policy recommendations aimed at alleviating the enormous shortfall in the global realization of the human right to adequate housing.

109. Accordingly, the Special Rapporteur intends to promote the linkages between the right to adequate housing as a component of the right to an adequate standard of living, and the global review processes of United Nations conferences including the five-year review of the Habitat Agenda (Istanbul +5) in June 2001, the 10-year review of the World Summit for Children in September 2001, the Third United Nations Conference on Least Developed Countries (LDC-III) in May 2001 and the High-level Event on Financing for Development in 2002. This report has already highlighted issues to be raised at these conferences.

110. The following recommendations, respectfully made to the Commission, will allow the Special Rapporteur to fulfil his mandate effectively:

(a) Given the consistent interest that the United Nations General Assembly has shown on the subject, the Special Rapporteur requests the Commission to make it possible to report annually both to the Commission and to the General Assembly;

(b) The Special Rapporteur places importance on the need to undertake further studies, based on the development of a research agenda, on the effects of globalization processes, including liberalization, deregulation and privatization, with a particular focus on housing. The Commission could request the Special Rapporteur to convene an expert seminar, in collaboration with OHCHR, UNCHS and the United Nations Research Institute for Social Development, to address these issues and initiate a process that will enable the Special Rapporteur to make policy recommendations;

(c) Given that the critical issue of women and housing rights will be a consistent theme during the course of the mandate, the Special Rapporteur requests the Commission also to make it possible for him to report annually to the Commission on the Status of Women;

(d) The Commission may wish to entrust the Special Rapporteur with the tasks of seeking, receiving and responding to information on all aspects of the realization of the right to adequate housing, in particular urgent calls/action in cases of serious violations of the right to adequate housing, including forced evictions or discriminatory policies and measures that impact upon the realization of the right to adequate housing;

(e) Given the wide scope of his mandate and the scale of the housing crisis, including the differential impacts on vulnerable groups, in the world today, the Special Rapporteur requests that he be permitted to submit periodically, in addition to the annual report, thematic reports that highlight different dimensions of the problems and solutions that are called for in order to develop an accurate assessment and a result-oriented thrust to the mandate. These thematic reports could focus on developing the link between the right to adequate housing as a component of the right to an adequate standard of living and issues such as forced evictions and resettlement, international cooperation, indicators and benchmarks.

Notes

[1] The inspiration for this definition comes from the work of the Indian National Campaign for Housing Rights, the Habitat International Coalition and the Committee on Economic, Social and Cultural Rights.

[2] See E/1990/23-E/C.12/1990/3, chap. VI, sect. B.

[3] E/1992/23-E/C.12/1991/4, annex III. All General Comments are also available on the OHCHR Web site.

[4] E/1998/22-E/C.12/1997/10, annex IV.

[5] E/1993/22-E/C.12/1994/20, annex IV.

[6] E/1996/22-E/C.12/1995/18, annex IV.

[7] E/C.12/2000/4.

[8] A/50/18, annex VII.

[9] A/51/18, annex IV.

[10] See, for example, the Committee's concluding observations on the fourth periodic report of Canada adopted at its sixty-fifth session in 1999 (CCPR/C/79/Add.105), in which the Committee looked at the severe implications of homelessness on the right to life.

[11] A/43/8/Add.1/para. 5

[12] A/48/8, annex I, sect. A.

[13] UNCHS (Habitat), "Towards a Housing Rights Strategy: Practical Contributions by UNCHS (Habitat) on Promoting, Ensuring and Protecting the Full Realization of the Human Right to Adequate Housing" (HS/C/15/INF.7).

[14] See HS/C/16/2/Add.2, annex II.

[15] A/52/8, annex I, sect. A.

[16] See in particular Stephen Hansen, Thesaurus of Economic, Social and Cultural Rights: Terminology and Potential Violations (Washington D.C.: American Association for the Advancement of Science, 2000); Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington D.C.: American Association for the Advancement of Science, 2000); Circle of Rights: Economic, Social and Cultural Rights Activism, A Training Resource (International Human Rights Internship Program and Asian Forum for Human Rights Development, 2000); and Monitoring Economic, Social and Cultural Rights: The Philippine Experience Phase One (Manila: Philippine Human Rights Information Center, 1997).

[17] See UNCTAD, The Least Developed Countries 2000 Report, UNCTAD/LDC/2000.

[18] Santosh Mehrotra, Jan Vandermoortele and Enrike Delamonica, Basic Services for All? Public Spending and the Social Dimensions of Poverty (Florence: UNICEF Innocenti Research Centre, 2000).

[19] The Special Rapporteur takes note of several important reports by UNICEF such as Poverty Reduction Begins with Children and the State of the World's Children 2001, which have embraced a human rights approach.

[20] Study of the Problem of Discrimination against Indigenous Populations, Volume V - Conclusions, Proposals and Recommendations (United Nations publication, Sales No. E.86.XIV.3), paras. 196-197.

[21] See The Government of the Republic of South Africa et. al. v. Irene Grootboom et. al., Case CCT 11/00, heard on 11 May 2000 and decided on 4 October 2000.

[22] Section 39 states that courts must: "Promote the values that underlie an open and democratic society based on human dignity, equality and freedom [and] must consider international law".

[23] South Africa became a signatory on 3 October 1994, but has not yet ratified the Covenant.

[24] Justice Yacoob of the Constitutional Court of South Africa described the meaning of minimum core obligation: "It is the floor beneath which the conduct of the State must not drop if there is to be compliance with the obligation. Each right is a 'minimum essential level' that must be satisfied by the States parties".

[25] Narmada Bachao Andolan v. Union of India and Others, 18 October 2000 [hereinafter Narmada].

[26] The Supreme Court of India has held on numerous occasions that international law can be read into the domestic law of the country. Gramophone Co. of India v. B.B. Pandey, 1984 (2) SCC 534; PUCL v. Union of India, 1997 (3) SCC 433; and CERC v. Union of India, 1995 (3) SCC 42 are cases that support this assertion. In addition, article 51 of the Constitution of India states: "The State shall endeavour to ... (c) foster respect for international law and treaty obligations in the dealings of organized people with one another ..." Accordingly, the courts and the legislature are encouraged to maintain harmony with international law in their decision-making.

[27] According to official figures, the Sardar Sarovar Project will displace 40,827 families, mostly from tribal communities. The unofficial total is estimated to be as high as half a million.

[28] Narmada, at para. 61.

[29] See Francis Coralie v. The Union Territory of Delhi, (1981) 1 SCC 608; R. Francis Mullin v. Administrator of Union Territory of Delhi (1982) 2 SCR 516; Olga Tellis v. Bombay Municipal Corp., (1985) 3 SCC 545; Shantistar Builders v. Narayan Khimalal Totame and Others (1990) 1 SCC 520; Keshavananda Bharti v. State of Kerala [as reported in Unnikrishnan v. State of Andhra Pradesh, p. 2229]; and Chamelli Singh and Other v. State of Uttar Pradesh (JT 1995 (9) SC 380. Excerpts from this judgement will be available on the OHCHR Web site on housing.

[30] See in particular the Record of the Workshops on International Trade, Investment and Finance and Economic, Social and Cultural Rights: The Role of the Committee on Economic, Social and Cultural Rights, 6 May and 19 August 2000 (CESCR/WK), available on the OHCHR Web site.